

# Reclamation Manual

Reclamation Acquisition Regulation System

401 DM Addition to FAR &amp; DIAR

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**PART WBR 1403 -- IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST      WBR 1403**


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## **PART WBR 1403**

### **IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

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WBR 1403.104-6

**PART WBR 1403**  
**IMPROPER BUSINESS PRACTICES AND**  
**PERSONAL CONFLICTS OF INTEREST**

**SUBPART WBR 1403.1 -- SAFEGUARDS**

**WBR 1403.101 Standards of conduct.**

**WBR 1403.101-3 Agency regulations.**

(a)(1) As a DOI authorized exception to the gratuity prohibitions in FAR 3.101-2, employees may accept food, refreshments, or entertainment at widely-attended functions provided a completed form DI-1958, "Request to Accept Food, Refreshments, or Entertainment at Widely-Attended Functions," is approved by the employee's supervisor prior to the event. The employee shall retain the original copy of the approved form.

(2) If food, refreshments, or entertainment are provided at a widely-attended function and the furnishing of such gratuities was not previously announced, the approval required by subparagraph (b)(1) above shall be obtained orally by the employee attending the function, if practicable. Upon return to work, the employee shall promptly obtain the required written approval.

**WBR 1403.101-70 Notice.**

(a) The notice in DIAR 1403.101-70 is contained in the TEP appointment memorandum prescribed in WBR 1415.608(b).

(b) Form DI-1960, as prescribed in DIAR 1403.101-70, is illustrated in WBR 1453.303-DI-1960.

**WBR 1403.104 Procurement Integrity.**

**WBR 1403.104-3 Statutory prohibitions and restrictions.**

To ensure compliance with the time restrictions on prohibited conduct under FAR 3.104-3(b) and (d), supervisors of procurement officials shall maintain records documenting work assignments involving personal and substantial participation in any activities listed in FAR 3.104-4(h)(1) and WBR 1403.104-4(c). The records shall include the official beginning and estimated ending dates of work assignments. Upon request, the supervisor shall furnish this information to all affected procurement officials.

**WBR 1403.104-4 Definitions.**

The HCA has delegated authority to the CCO to make the determination in FAR 3.104-4(h)(5) for individuals whose authority is limited to the micro-purchase threshold

and unlikely to make purchases exceeding \$20,000 in any 12-month period.

**WBR 1403.104-5 Disclosure, protection, and marking of proprietary and source selection information.**

(a) Prior to authorization for additional classes of persons to have access to proprietary or source selection information, approval shall be requested from the Director, PAM, through the HCA.

(b) To comply with the record keeping requirements of FAR 3.104-5(d)(2), all requisitions exceeding \$100,000 shall include a list of persons authorized access to proprietary or source selection information in connection with the preparation of the requisition. If no persons have been authorized access to such information or no such information was developed in connection with the preparation of the requisition, an explanatory statement shall be included with the requisition. The CO shall include the list or statement required by this subsection with the list required by FAR 3.104-9(e)(1)(iii).

(c) Certifications obtained on Optional Form (OF) 333, as required by FAR 3.104-12(a)(2), shall be retained in the employee's Official Personnel Folder and not in the contract file.

**WBR 1403.104-6 Restrictions on employment or business opportunity discussions between competing contractors and procurement officials.**

(a) Responsibilities of procurement officials desiring recusal.

(1) A procurement official desiring to discuss employment or business opportunities with a competing contractor during the conduct of a procurement shall --

(i) Review the criteria for recusal eligibility in FAR 3.104-6(c); and

(ii) Determine in writing if he or she is eligible for recusal.

(2) If a negative determination of recusal eligibility is made under subparagraph (a)(1) of this subsection, a written memorandum requesting concurrence with the decision shall be submitted to the procurement official's immediate supervisor.

(3) If an affirmative determination of recusal eligibility is made under subparagraph (a)(1) of this subsection, a written proposal requesting recusal pursuant to FAR 3.104-6(d) and paragraphs (b) and (c) of this subsection shall be submitted through the AAMS, D-7800, to the HCA for approval.

(4) After submission of a recusal proposal under subparagraph (a)(3) and paragraph (b) of this subsection, the procurement official shall coordinate with the CO assigned to the instant procurement to

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determine if further participation in the procurement shall be suspended for that official (see FAR 3.104-6(e)).

(5) Procurement officials desiring to have their participation in a procurement reinstated in accordance with FAR 3.1204-6(h) shall submit a written request for reinstatement through AAMS, D-7800 to the HCA. The request shall include --

(i) A reference to the original recusal approval;

(ii) The duration of the recusal period;

(iii) The result of any discussions of employment; and

(iv) The circumstances now permitting reinstatement.

(b) **Recusal proposal contents.** Recusal proposals shall contain the following information in addition to that required by FAR 3.104-6(d):

(1) Requisition, solicitation or other number which identifies the procurement action;

(2) Title of the project;

(3) Location of the servicing contracting office;

(4) Affirmative determination of eligibility under subparagraph (a)(1) of this subsection; and

(5) The requested dates for beginning and ending the period of the recusal.

(c) **Recusal proposal distribution.** (1) The original proposal shall be forwarded through the AAMS, D-7800, to the HCA for disposition as required by FAR 3.104-6(f).

(2) Copies of the proposal shall be sent concurrently to --

(i) The CO if the procurement official is not the CO; and

(ii) The procurement official's immediate supervisor.

(d) **Responsibilities of the procurement official's supervisor.** Within 5 days of receipt of a copy of a recusal proposal from a procurement official, the official's supervisor shall --

(1) Review the proposal to evaluate eligibility for recusal under FAR 3.104-6(c); and

(2) Prepare and submit a written evaluation of the employee's eligibility to the HCA. This evaluation shall include any impact the recusal may have on the current workload or on the mission of Reclamation.

(e) **Responsibilities of the CO.** Within 5 days after receipt of a copy of a recusal proposal, the CO --

(1) Shall submit a written evaluation of the recusal request to the HCA; and

(2) May formally suspend the procurement official's or competing contractor's participation in

the procurement pursuant to FAR 3.104-6(e) pending approval or disapproval of the recusal proposal.

(3) If the procurement official is the CO, the CO shall immediately remove himself/herself from any further participation in the affected procurement(s).

(f) **Responsibilities of the AAMS.** Within 5 days after receipt of the evaluations under paragraphs (d) and (e) of this subsection, or a request for reinstatement submitted under subparagraph (a)(4) of this subsection, AAMS, D-7800, shall review and evaluate all information regarding the recusal (or request for reinstatement) and submit a recommendation for approval or disapproval to the HCA.

(g) **Responsibilities of the HCA.** (1) Within 5 days after receipt of all information (or reinstatement request) transmitted under paragraph (f) of this subsection, the HCA shall --

(i) Consult with the Reclamation Ethics Official, D-7530, as required by FAR 3.104-6(f), prior to approving or rejecting the proposal or request;

(ii) Determine from the proposal if the procurement official is eligible for recusal;

(iii) Evaluate the proposal and related information, or reinstatement request, in accordance with FAR 3.104-6(f); and

(iv) Approve or reject the proposal or request in writing unless additional information is necessary to complete the evaluation.

(2) Any recusal proposal approval shall state the period of disqualification in accordance with FAR 3.104-6(g).

#### WBR 1403.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.

The Reclamation ethics counselor is responsible for responding to a written request for an ethics advisory opinion and shall retain the request and the advisory opinion in accordance with FAR 3.104-8(c)(4) and 3.104-9(e)(3).

#### WBR 1403.104-9 Certification requirements.

(a) Pursuant to DIAR 1403.104-9, if the CO certifies that he/she has no information concerning a violation or possible violation of the statutory prohibitions, the certification required by FAR 3.104-9(c) shall be included in the contract file. No other distribution is required.

(b) If the certification by the CO contains information on a violation or possible violation of the statutory prohibitions, the procedures at FAR 3.104-11 and WBR 1403.104-11 shall be followed.

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### WBR 1403.104-11 Processing violations or possible violations.

(a) The CO's determination under FAR 3.104-11(a) regarding the impact of a reported or possible violation shall be in writing and include the following information:

- (1) A description of the procurement;
- (2) The status of the procurement;
- (3) The facts surrounding the violation or possible violation;
- (4) The reasons why the procurement is or is not impacted;
- (5) Recommendations regarding disposition of the violation or possible violation; and
- (6) A concluding statement regarding whether the procurement should or should not proceed.

(b) If the determination under paragraph (a) above concludes that there is no impact on the procurement, it shall be submitted (along with supporting documentation) by sealed envelope to the CCO for concurrence or nonconcurrence. The envelope shall be marked "CONFIDENTIAL PROCUREMENT INTEGRITY INFORMATION TO BE OPENED ONLY BY ADDRESSEE."

(c)(1) The concurrence or nonconcurrence of the CCO with the CO's conclusion shall be made in writing.

(2) In the event of concurrence, the CO shall proceed with the procurement. The CCO shall forward all documentation to the HCA through D-7800 to satisfy the disclosure requirements of FAR 3.104-11(a)(1).

(3) In the event of nonconcurrence, the CCO shall advise the CO to suspend further action on the procurement and refer the matter through D-7800 to the HCA in accordance with FAR 3.104-11(a)(2).

(d) Provide a copy of the reported violation and recommended action to the OIG in accordance with 111 DM 3.

### WBR 1403.104-12 Ethics program training requirements.

(a)(1) The certification required by FAR 3.104-12 prior to serving as a procurement official shall be obtained by the Servicing Personnel Office (SPO) during the appointment process from appointees to positions with identified procurement official duties and placed on the right side of the employee's Official Personnel Folder using OF-333 (see FAR 3.104-12(a)(3)).

(2) The SPO shall --

- (i) Develop and maintain a master list of employees who have signed certificates;
- (ii) Provide a copy of the list and its updates to the cognizant CCO; and
- (iii) Provide verification on request to

interested parties that current certifications of particular employees are on file.

(b) Supervisors who subsequently assign procurement official duties to an employee after the appointment process shall ensure that a signed OF-333 is obtained and forwarded to the SPO for addition to the master list of certified employees and placement in the Official Personnel Folder.

(c)(1) If a procurement official refuses to sign a procurement integrity certification form as required by WBR 1403.104-7, 1403.104-9(a), and 1403.104-12(b), the supervisor shall ensure that the employee no longer serves as a procurement official. In the case of an employee leaving the Government, final clearance during the exit clearance process shall be delayed until the matter is resolved.

(2) Failure to certify, upon request, may be cause for appropriate corrective, remedial, or disciplinary action. Employee appeals of their designation as procurement officials for purposes of the law may be considered under existing mechanisms for dispute resolution if such matters are otherwise eligible for processing.

(d) The CO is not responsible for ensuring that another agency's employee, who may function as a procurement official on behalf of that agency in interacting with Reclamation personnel, has executed the OF-333 pursuant to FAR 3.104-12 beyond making a verbal inquiry of the employee and relying on the verbal reply to such an inquiry.

(e) Prior to the evaluation of any offeror or contractor proposal, the CO shall ensure that each procurement official who will assist in the performance of the evaluation has completed OF-333. Individuals refusing to complete OF-333 shall be suspended by the CO from further participation and the matter shall be referred by the CO to the individual's supervisor for disposition.

(f) OF-333 shall also be completed by individuals acting as procurement officials on behalf of Reclamation who are contractors, or are employed by, contractors, consultants, experts, or advisors (other than competing contractors) in order to satisfy the certification requirements of FAR 3.104-12(a).

### SUBPART WBR 1403.80 -- SEPARATION OF FUNCTIONS

#### WBR 1403.8000 Acquisition activities and related functions.

(a) Separation of key acquisition activities and related functions is necessary in order to establish checks and balances to maintain effective internal control pursuant to OMB Circular A-123, Internal Control Review and Procurement Systems Performance Certification

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Handbook. Accordingly, acquisition operations shall be organized to ensure --

(1) The person signing a contract action is not the same person who signed the requisition for that action;

(2) The person performing the independent review or providing higher level approval on a contract action is not the same person who performed the action; and

(3) The person certifying invoices for payment is not the same person who signed the contract action under which the payments are being made.

(b) Reclamation policy concerning independent review of contract actions is contained in WBR 1401.7182.